

ORIGINAL



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

2006 MAR -3 P 1:45

JEFF HATCH-MILLER - Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

AZ CORP COMMISSION  
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION  
OF ARIZONA WATER COMPANY, AN  
ARIZONA CORPORATION, TO EXTEND  
ITS EXISTING CERTIFICATE OF  
CONVENIENCE AND NECESSITY AT  
RIMROCK, YAVAPAI COUNTY,  
ARIZONA

DOCKET NO. W-01445A-05-0705

RESPONSES TO STAFF REPORT

A January 4, 2006 Procedural Order in this matter provided that Arizona Water Company (the "Company") may file responses to the Staff Report on or before March 3, 2006. The Company hereby files its Responses as follows:

1. The Company disagrees with, and objects to the Staff's recommendation that Parcel 3, as identified in the Company's application, should not be added to the Company's certificated area for the Rimrock system. The Company disagrees with the Staff's recommendation for the following reasons:

a. If the Company's application in this matter is approved, it plans to install a twelve-inch pipeline in the expansion area. A portion of the pipeline will be located in Parcel 3 (if Parcel 3 is added to its certificated area). In the Company's experience, the extension of a facility such as this pipeline will result in numerous requests for service, once the pipeline is installed. This fact negates one of the reasons that Staff cites for recommending that Parcel 3 not be included, i.e., that the Company has not received a request for service from any property owners located in Parcel 3.

1           b.       As directed by the January 4, 2006 Procedural Order, the Company  
2 mailed notice of the March 21, 2006 hearing to each property owner in the proposed  
3 expansion area, including Parcel 3. As of the date of these Responses, the Company  
4 has not received any objections to its application from any of the property owners in the  
5 expansion area, including Parcel 3 (and the Company is not aware of any such  
6 objections being sent directly to the Commission). It is reasonable, therefore, to  
7 surmise that some of the property owners in Parcel 3, have the expectation that the  
8 Company will be providing water service to them in the future. The Staff's  
9 recommendation would frustrate property owners' reasonable expectations.  
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11           c.       The Staff Report indicates that the Staff basically solicited the  
12 intervention of Montezuma Rimrock Water Co., LLC in this proceeding. Notwithstanding  
13 the Staff's recruiting, judging from the tenor of Montezuma's February 23, 2006 letter  
14 requesting intervention, Montezuma, certainly at the present time, has no intention of or  
15 plans for providing water service to Parcel 3, and there is no indication that Montezuma  
16 has the present capacity to serve Parcel 3. The Company, however, is ready, willing  
17 and able to serve Parcel 3 if its application is approved. In fact, in Decision No. 67583,  
18 Staff recommended the Company as the water provider for Montezuma Rimrock Water  
19 Company customers and recommended denial of Montezuma's application, due to  
20 serious concerns Staff demonstrated about the new utility's ability to serve the 120+  
21 existing customers. (Findings of Fact Nos. 32 and 33) In addition, if this area is left  
22 uncertificated, which is what Staff seems to be recommending, it will leave a small,  
23 uncertificated area near the certificated areas of the Company and Montezuma that  
24 would have to be addressed in a future application. The result of this would be  
25 needless, avoidable administrative inefficiency and additional time and expense for  
26 Staff, the Company and/or Montezuma.  
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1           2.     At page 4 of the Staff Report, Staff recommends that, as a condition of a  
2 Commission order approving, in part, the Company's application, the Company should  
3 be required to file ..."copies of the developer's letter of Adequate Water Supply stating  
4 that there is adequate water for the requested area, no later than one year from the  
5 effective date of an order approving this extension." This proposed condition misstates  
6 Arizona law, and Arizona Department of Water Resources and Arizona Department of  
7 Real Estate requirements.  
8

9           A.R.S. §45-108.A provides that, in areas located outside of active  
10 management areas, like the Rimrock certificated area, the developer of a proposed  
11 subdivision shall submit plans to the Department for the subdivision and demonstrate  
12 the adequacy of the water supply to meet the needs projected by the developer. The  
13 Department's Director evaluates the plans and issues a report on the plans. Next, as  
14 provided in A.R.S. §32-2181.F, if the Director reports an inadequate supply to meet the  
15 needs projected by the developer, the State Real Estate Commissioner must require  
16 that all promotional material and contracts for the sale of lots in the subdivision  
17 approved by the Commissioner adequately display the Department's report or the  
18 developer's summary of the report as approved by the Commissioner. Thus, in areas  
19 located outside of active management areas, state law provides for a notice  
20 requirement concerning water adequacy-an adequate water supply is **not** required, as  
21 the Staff Report seems to suggest. Therefore, the Staff recommendation should be  
22 either removed, or reworded to require only that the Company file a copy of the  
23 developer's water adequacy statement as required by A.R.S. §45-108 as soon as the  
24 statement is available, without an artificial deadline of one year. Copies of A.R.S. §45-  
25 108.A and §32-2181.F are attached to these Responses as Attachments "A" and "B",  
26 respectively.  
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1           3.       At page 2 of the Staff Report. Staff indicates that the Company has a 480  
2 gallons/minute of storage capacity. This number is incorrect. The Company actually  
3 has 745 gallons/minute of storage capacity in the Rimrock System.

4                       RESPECTFULLY SUBMITTED this 3rd day of March, 2006.

6                                       ARIZONA WATER COMPANY

7  
8                       By: Robert W. Geake  
9                       Robert W. Geake  
10                      Vice President and General Counsel  
11                      ARIZONA WATER COMPANY  
12                      Post Office Box 29006  
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1 Original and thirteen (13) copies of the foregoing filed this 3rd day of March 2006 with:

2 Docket Control Division  
3 Arizona Corporation Commission  
4 1200 West Washington Street  
5 Phoenix, Arizona 85007

6 A copy of the foregoing was hand-delivered this 3rd day of March 2006 to:

7 Honorable Amy B. Bjelland  
8 Administrative Law Judge  
9 Hearing Division  
10 Arizona Corporation Commission  
11 1200 West Washington  
12 Phoenix, AZ 85007

13 And a copy of the foregoing was mailed this 3rd day of March 2006 to:

14 Ms. Patricia D. Olsen  
15 President  
16 Montezuma Rimrock Water Co., LLC  
17 P.O. Box 10  
18 East Goldmine Road  
19 Rimrock, AZ 86335

20 Christopher Kempley, Chief Counsel  
21 Legal Division  
22 Arizona Corporation Commission  
23 1200 West Washington Street  
24 Phoenix, Arizona 85007

25 Ernest G. Johnson  
26 Director, Utilities Division  
27 Arizona Corporation Commission  
28 1200 West Washington Street  
Phoenix, Arizona 85007

By: Robert W. Seabe

## ATTACHMENT "A"

### WATER RESOURCES

### § 45-108

#### Ch. 1

shall not be affected by the provisions of this section, except as provided in subsection D.

**D.** Individuals, irrigation districts, corporations, state departments, agencies, boards, commissions and political subdivisions of the state shall cooperate, confer with and obtain the advice of the director as to those negotiations, contracts and subcontracts described in subsection C that affect the allocation and use of main stream Colorado river water or the allocation and use of Colorado river water delivered through the central Arizona project. For a proposed contract or subcontract or a proposed amendment of a contract or subcontract that will result in a transfer of an allocation or entitlement of Colorado river water, including central Arizona project water, from a non-Indian Arizona contractor or subcontractor for a term of more than one year, the obligation to cooperate, confer with and obtain the advice of the director shall include the obligation to submit to the director for review the proposed contract or subcontract or the proposed amendment, and all related exhibits and agreements, prior to its execution by the contractor or subcontractor. Added as § 45-512 by Laws 1962, Ch. 109, § 1. Amended by Laws 1971, Ch. 49, § 10, eff. April 13, 1971. Renumbered as § 45-107 and amended by Laws 1980, 4th S.S., Ch. 1, § 36, eff. June 12, 1980. Amended by Laws 1994, Ch. 278, § 6; Laws 1996, Ch. 308, § 2, eff. April 30, 1996.

<sup>1</sup> Section 45-2401 et seq.

#### Historical and Statutory Notes

For impairment of obligations and nonseverability provisions of Laws 1980, 4th S.S., Ch. 1, effective June 12, 1980, see Historical and Statutory Notes preceding § 45-401.

Transfer of interstate stream commission's funds, equipment, orders, contracts, and judi-

cial actions and water resource data derived from cooperation with federal programs provisions of Laws 1971, Ch. 49, see Historical and Statutory Notes following § 45-121.

Former § 45-107 was renumbered as § 45-111.

### § 45-108. Evaluation of subdivision water supply

**A.** In areas outside of active management areas established pursuant to chapter 2, article 2 of this title,<sup>1</sup> the developer of a proposed subdivision including dry lot subdivisions, regardless of subdivided lot size, prior to recordation of the plat, shall submit plans for the water supply for the subdivision and demonstrate the adequacy of the water supply to meet the needs projected by the developer to the director. The director shall evaluate the plans and issue a report on the plans.

**B.** The director shall evaluate the proposed source of water for the subdivision to determine its ability to meet proposed uses for a period of years commensurate with normal practices in other areas of the state and shall forward a copy of such evaluation to the state real estate commissioner.

**C.** The director may designate cities, towns and private water companies as having an adequate water supply by reporting that designation to the water department of the city or town or private water company and the state real estate commissioner.

## ATTACHMENT "B"

### PROFESSIONS AND OCCUPATIONS

§ 32-2181

B. The commissioner, on application, may grant a subdivider of lots or parcels within a subdivision for which a public report was previously issued by the commissioner an exemption from all or part of the notification requirements of subsection A of this section. The subdivider shall file a statement with the commissioner indicating the change of ownership in the lots or parcels together with any material changes occurring subsequent to the original approval of the subdivision within which the lots or parcels are located. The statement shall further refer to the original approval by the commissioner.

C. If the subdivision is within a groundwater active management area, as defined in § 45-402, the subdivider shall accompany the notice with a certificate of assured water supply issued by the director of water resources along with proof that all applicable fees have been paid pursuant to §§ 48-3772 and 48-3774.01, unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply by the director of water resources pursuant to § 45-576 or is exempt from the requirement pursuant to § 45-576. If the subdivider has submitted a certificate of assured water supply to a city, town or county prior to approval of the plat by the city, town or county and this has been noted on the face of the plat, the submission constitutes compliance with this subsection if the subdivider provides proof to the commissioner that all applicable fees have been paid pursuant to §§ 48-3772 and 48-3774.01.

D. It is unlawful for a person or group of persons acting in concert to attempt to avoid this article by acting in concert to divide a parcel of land or sell subdivision lots by using a series of owners or conveyances or by any other method that ultimately results in the division of the lands into a subdivision or the sale of subdivided land. The plan or offering is subject to this article. Unlawful acting in concert pursuant to this subsection with respect to the sale or lease of subdivision lots requires proof that the real estate licensee or other licensed professional knew or with the exercise of reasonable diligence should have known that property which the licensee listed or for which the licensee acted in any capacity as agent was subdivided land subject to this article.

E. A creation of six or more lots, parcels or fractional interests in improved or unimproved land, lots or parcels of any size is subject to the provisions of this article except when:

1. Each of the lots, parcels or fractional interests represents, on a partition basis, thirty-six acres or more in area of land located in this state including to the centerline of dedicated roads or easements, if any, contiguous to the land in which the interests are held.
2. The lots, parcels or fractional interests are the result of a foreclosure sale, the exercise by a trustee under a deed of trust of a power of sale or the grant of a deed in lieu of foreclosure. This paragraph does not allow circumvention of the requirements of this article.
3. The lots, parcels or fractional interests are created by a valid order or decree of a court pursuant to and through compliance with title 12, chapter 8, article 7<sup>1</sup> or by operation of law. This paragraph does not allow circumvention of the requirements of this article.
4. The lots, parcels or fractional interests consist of interests in any oil, gas or mineral lease, permit, claim or right therein and such interests are regulated as securities by the United States or by this state.
5. The lots, parcels or fractional interests are registered as securities under the laws of the United States or the laws of this state or are exempt transactions under § 44-1844, 44-1845 or 44-1846.
6. The commissioner by special order exempts offerings or dispositions of any lots, parcels or fractional interests from compliance with this article on written petition and on a showing satisfactory to the commissioner that compliance is not essential to the public interest or for the protection of buyers.

F. In areas outside of groundwater active management areas established pursuant to title 45, chapter 2, article 2,<sup>2</sup> if the director of water resources, pursuant to § 45-108, reports an inadequate on-site supply of water to meet the needs projected by the developer or if no water is available, the state real estate commissioner shall require that all promotional material and contracts for the sale of lots in subdivisions approved by the commissioner adequately display the director of water resources' report or the developer's brief summary of the report as approved by the commissioner on the proposed water supply for the subdivision.